

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HILLS POINT INDUSTRIES LLC)
d/b/a GORILLA COMMERCE,)
)
Plaintiff,) C.A. No. _____
)
v.)
) **DEMAND FOR JURY TRIAL**
JUST FUR LOVE LLC,)
)
Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Hills Point Industries LLC, d/b/a Gorilla Commerce (“Gorilla Commerce”) by and through its undersigned counsel, files this Complaint for a declaratory judgment of no patent infringement against Defendant Just Fur Love LLC (“Just Fur Love”) as follows:

NATURE OF ACTION

1. This is an action for a declaratory judgment that Gorilla Commerce does not infringe Claim 1 of U.S. Patent No. 11,141,013 (the “’013 Patent”).
2. Gorilla Commerce seeks this relief because Just Fur Love has alleged that Gorilla Commerce’s Gorilla Grip Rug Gripper (“GG Rug Gripper”) products infringe Claim 1 of the ’013 Patent. Just Fur Love’s allegations have caused, and will continue to cause, Gorilla Commerce to lose sales and be de-listed from the Amazon.com online marketplaces where Gorilla Commerce sells a significant number of its GG Rug Gripper products. Gorilla Commerce believes that Just Fur Love’s allegations lack merit and thus asks this Court to declare that the GG Rug Gripper products do not infringe the ’013 Patent.

THE PARTIES

3. Gorilla Commerce is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 20 Ketchum Street, Westport, Connecticut.

4. On information and belief, Defendant Just Fur Love LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 112 S. French Street, Suite 105-9, Wilmington, Delaware.

5. Just Fur Love may be served via its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code (35 U.S.C. § 1 et. seq.) and under the Federal Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202).

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Just Fur Love because it is a Delaware limited liability company and because its principal place of business is in Delaware.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

THE '013 PATENT

10. A true and correct copy of the '013 Patent is attached hereto as Exhibit A. The '013 Patent is titled "Apparatus to Prevent Curling of a Rug Corner," and issued on October 12, 2021, from an application filed on March 4, 2021. The '013 Patent lists Allan Wendling as the Inventor and Just Fur Love, LLC, as the Applicant and Assignee.

PRESENCE OF AN ACTUAL CONTROVERSY AND APPREHENSION OF SUIT

11. Gorilla Commerce was informed by Amazon, and therefore believes, that on or around July 6, 2022, Just Fur Love, the assignee of the '013 Patent, submitted a complaint with Amazon.com asserting that the GG Rug Gripper products (ASINs B08BS3WG57, B084WZ7W9T, B0815BLNX1, and B08BS3CQT7) infringe the '013 Patent and sought to initiate the Amazon Patent Evaluation Express Procedure and get the GG Rug Gripper products de-listed from Amazon.com. Gorilla Commerce never received notice of the July 2022 complaint from Amazon because it was sent to a defunct email address. As a result, Gorilla Commerce could not respond to Just Fur Love's complaint in the time required, and its GG Rug Gripper products were de-listed from Amazon.com.

12. On September 14, 2022, counsel for Just Fur Love, on behalf of its parent, Whele LLC dba Perch ("Perch"), sent a licensing demand to Gorilla Commerce for the '013 Patent.

13. On September 19, 2022, Gorilla Commerce successfully appealed Amazon's de-listing of its GG Rug Gripper products based on Just Fur Love's July 6, 2022 complaint because of the failure to notify Gorilla Commerce. The GG Rug Gripper products were reinstated on Amazon.com that same day.

14. Also on September 19, 2022, Just Fur Love's July 6, 2022 complaint under the Amazon Patent Evaluation Express Procedure was re-asserted against Gorilla Commerce. *See* Exhibit B. In the complaint, Just Fur Love asserted that the GG Rug Gripper products, identified as ASINs B08BS3WG57, B084WZ7W9T, B0815BLNX1, and B08BS3CQT7, infringed claim 1 of the '013 Patent. *Id.*

15. Under the terms of the Amazon Patent Evaluation Express Procedure, within one week of the September 19 notification, in order to avoid having the accused products again de-listed on Amazon.com, Gorilla Commerce must: (1) resolve the infringement claim with Just Fur

Love and have Just Fur Love retract its claim with Amazon; (2) agree to a neutral evaluation of Just Fur Love's claim with an Amazon-selected evaluator, or (3) seek to resolve the claim against it in District Court by way of a declaratory judgment action of non-infringement. *Id.*

16. Gorilla Commerce derives a substantial portion of its sales from Amazon.com. Thus, the threat to Gorilla Commerce's business is real and immediate and the de-listing of the GG Rug Gripper products from Amazon.com would cause Gorilla Commerce immediate and significant harm.

17. There is a substantial controversy of sufficient immediacy and reality between Gorilla Commerce and Just Fur Love to warrant issuance of a declaratory judgment.

18. By virtue of statements from Just Fur Love and its parent, Perch, regarding the '013 Patent and its allegations of infringement by the GG Rug Gripper products with Amazon, Gorilla Commerce has a reasonable apprehension that Just Fur Love will file an action against Gorilla Commerce alleging that its GG Rug Gripper products infringe the '013 Patent. Gorilla Commerce believes that Just Fur Love's infringement allegations lack merit and seeks relief from this Court declaring that its GG Rug Gripper products do not infringe claim 1 of the '013 Patent. Without such declaration, Just Fur Love's allegations of infringement present a substantial controversy of sufficient immediacy and reality between Gorilla Commerce and Just Fur Love to warrant issuance of a declaratory judgment.

19. Gorilla Commerce denies that its GG Rug Gripper products infringe claim 1 of the '013 Patent and seeks a declaratory judgment to that effect.

CLAIM FOR RELIEF
Declaratory Judgment of Non-Infringement of Claim 1 of the '013 Patent

20. The allegations of paragraphs 1-19 are incorporated by reference, as if fully set forth herein.

21. Gorilla Commerce's GG Rug Gripper products do not infringe claim 1 of the '013 Patent.

22. Gorilla Commerce's GG Rug Gripper products are individual strips able to hold the sides of a rug in place on hard-surface floors such as hardwood, laminate, or tile flooring. The body of each strip is highly flexible and non-rigid.

23. Therefore, the GG Rug Gripper products do not meet at least the following limitation of claim 1 of the '013 patent: "An apparatus to prevent curling of a rug corner away from a floor surface, the apparatus comprising: **a rigid and planar body.**"

24. The GG Rug Gripper products are individual strips, unlike those described as the "present invention" in the '013 Patent. The specification states: "the apparatus of the present invention comprises a rigid and planar V-shaped body." '013 Patent, 1:47-48. In addition to describing the "present invention" as comprising a "a rigid and planar V-shaped body," every figure of the patent shows a "V-shaped body."

25. The description of the "present invention" further states that "[w]hen use of the device of the present invention is desired, the protective cover for the adhesive layer is removed" and attached to the rug, and "[u]pon doing so, the rigid and planar V-shaped body maintains the rug corner in a flat condition." *Id.* 1:55-59. As recited in claim 1, it is the "rigid and planar body" of the claimed invention itself that "maintains the rug corner in a flat condition" when adhered to the rug, regardless of whether the rug is on the floor surface.

26. Because the GG Rug Gripper products are flexible, non-rigid individual strips and not a rigid V-shaped body, the GG Rug Gripper products will not themselves "maintain the rug corner in a flat position" when adhered to the sides of a rug. Therefore, the GG Rug Gripper products do not meet the following limitation of claim 1 of the '013 Patent: "said laminate structure

is adhered to the rug corner by said adhesive **whereby said body maintains the rug corner in a flat condition.**"

27. An actual controversy exists between Gorilla Commerce and Just Fur Love as to whether or not Gorilla Commerce has infringed or is infringing claim 1 of the '013 Patent.

28. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Gorilla Commerce is entitled to a declaration, in the form of a judgment, that by its GG Rug Gripper products Gorilla Commerce has not infringed and is not infringing claim 1 of the '013 Patent.

DEMAND FOR JURY TRIAL

Gorilla Commerce respectfully demands a trial by jury of all issues and claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Gorilla Commerce prays that the Court enter the following relief pursuant to 28 U.S.C. §§ 2201 and 2202:

- A. The Court declare that Gorilla Commerce, through its GG Rug Gripper products, does not infringe claim 1 of the '013 Patent;
- B. Gorilla Commerce be awarded its costs and fees in this action; and
- C. Gorilla Commerce be awarded such other and further relief as this Court deems is just and proper.

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